Regarded in detail the principal case is somewhat peculiar. Had the legislature enacted what the court has decided, it would have been a valid exercise of the police power. See *Munn* v. *Illinois*, 94 U. S. 113. For the opportunity to commit fraud was peculiarly tempting, and no doubt the defendant could and did, as a warehouseman, give himself special privileges as a dealer in grain. But, strictly, a court of its own motion has no police powers, and the decision must be regarded as a most liberal construction of the constitutional declaration that the maintaining of grain elevators is a public calling. Even so, the decision is very strong because it is based, not on actual misconduct, but on the temptation thereto. This is certainly further than the law has yet gone in its regulation of public service companies, though it is not further than it may perhaps eventually go. For example Art. 17, § 5 of the Constitution of Pennsylvania forbids common carriers from engaging directly or indirectly in mining articles for transportation over their lines. As to the slight effect of this prohibition, see Report of the Industrial Commission, Vol. XIX, p. 447.

With regard to the service due to rivals — a topic closely connected with this case — the law apparently holds that if they come as rivals, to compete in the public calling, service may be refused. See *Petition of Philadelphia, M. & S. St. Ry. Co.*, 53 Atl. Rep. 191 (Supreme Court of Pennsylvania). But if they come as ordinary members of the public, they must be accommodated. See *Rogers Locomotive, etc., Works* v. *Erie R. R. Co.*, 20 N. J. Eq. 379. This is true, even though such service increases the efficiency of a dependent private calling carried on by the rival at the expense of a similar private calling of the defendant's. *People* v. *Hudson River Tel. Co.*, 19 Abb. N. C. (N. Y.) 466. On the other hand, it is not unjust discrimination for a railroad to carry supplies for its own eating-house free, while charging its rivals regular freight rates. *Kelly* v. *Chicago, etc., R. R. Co.*, 93 Ia. 436. Apparently the effect of the decision in the principal case will be to add a new limitation to the law of public service. Instead of being "Serve the public, and incidentally yourself," it will be "Serve the public, and incidentally yourself only if there is no strong temptation to prefer the latter service."

ADMIRALTY JURISDICTION OVER TORTS. — A late decision in Hawaii fixes a new restriction upon the field of maritime tort. *Campbell* v. *H. Hackfeld & Co., Ltd.* (U. S. Dist. Ct. Hawaii, Oct. 21, 1902). The defendant corporation had contracted to unload a vessel lying within the navigable waters of the United States, and employed the plaintiff as a laborer in the undertaking. While working in the ship's hold, the plaintiff was injured by the defendant's negligence. The court held that, as the relation between the parties was not of a maritime nature, admiralty had no jurisdiction.

It has hitherto been considered settled law that admiralty jurisdiction over torts depends solely on the place where the tort is committed. See *The Plymouth*, 3 Wall. (U. S. Sup. Ct.) 20; *The Strabo*, 90 Fed. Rep. 110. In every instance which has been found, however, a maritime relation such as is required by the court in the principal case has in fact existed. The question of its necessity has, consequently, never before been actually decided. The novelty in the view of the court is that jurisdiction in torts, as in contracts, should extend only to cases in which the par-

ties are brought into relation with each other by reason of the fact that at least one of them is directly engaged in maritime affairs, representing a ship or her owners. It should be noted that the court proposes this test not as a substitute for the recognized one as to locality, but merely as a qualification upon it.

The chief arguments which suggest themselves in favor of the new doctrine are that it seems reasonable to restrict admiralty jurisdiction to matters which are in themselves of a maritime nature; that the new view is the result of a finer analysis of the nature of admiralty jurisdiction than has heretofore been made; and that, as indicated above, its adoption does not involve the actual overruling of previous decisions.

In considering these arguments, some investigation into the history of admiralty jurisdiction seems necessary. At the time of the Black Book, admiralty jurisdiction over both torts and contracts seems to have depended primarily on the place where the tort was committed or the contract made. See *De Lovio* v. *Boit*, 2 Gall. (U. S. Circ. Ct.) 398, 403 ff. In torts, this remained an undisputed test, and even in contracts efforts were made for a long time to restrict the jurisdiction by the same standard. *Bene* v. *Wilcocks*, Dyer, 159, n. 38. It was, however, finally recognized that the jurisdiction over contracts was, to some extent at least, independent of locality. *Anon.*, Winch 8. *Cf.* BENEDICT, ADM. PRAC., 3d ed., § 48. And that branch of the law by a gradual working away from the early locality test reached its present position, that jurisdiction depends on whether the transaction itself is of a maritime nature. *Insurance Co.* v. *Dunham*, 11 Wall. (U. S. Sup. Ct.) 1. The reason for this departure was, perhaps, the practical one that the locality test often gave undesirable results. Thus a court of admiralty should obviously have jurisdiction over charter-parties, even though made on land, whereas it is clearly impracticable for it to assume jurisdiction over a mortgage of realty merely because made at sea. Hence the original test of locality, being inappropriate to contracts, was discarded; but in torts, where its practical results were satisfactory, it was retained.

It is believed, therefore, that the doctrine of the principal case in qualifying the locality test as applied to torts, infringes a rule which originated in the very nature of admiralty jurisdiction, and which has been satisfactory in its practical operation. This test has been all but universally regarded as the sole one. See *The Plymouth*, *supra*. The single authority to the contrary is the somewhat obscurely stated *dictum* of a text-writer. BENEDICT, *supra*, § 308. The principal case seems, then, at variance with the spirit of the previous cases, even though reconcilable with the points actually decided. Not only would the adoption of its doctrine unsettle a rule which has long been assumed to be law, but it would make the question of jurisdiction over torts subject to the difficulty which so often perplexes cases of contract, namely, the necessity of deciding in each case what is a maritime relation. The decision in the principal case seems therefore unfortunate as increasing complication and uncertainty in the law without, apparently, securing any practical gain to compensate for these disadvantages.

CONSTITUTIONALITY OF STATE INTERFERENCE WITH CONTRACT RIGHTS OF A MUNICIPALITY. — The extent to which a state legislature may constitutionally interfere with the property and privileges of a municipal corporation, was recently brought into question in the Massachusetts courts. A